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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

DFSB KOLLECTIVE CO. LTD.,

Plaintiff.

vs.

CJ E&M, INC., a Korean corporation;
CJ E&M AMERICA, INC., a California
corporation,

Defendants.

CASE NO: 2:15-cv-01650-SVW-FFM

**DEFENDANT CJ E&M AMERICA,
INC.'S NOTICE OF MOTION AND
MOTION TO DISMISS
PLAINTIFF'S COMPLAINT FOR
FORUM NON CONVENIENS, LACK
OF STANDING, AND FAILURE TO
STATE A CLAIM FOR RELIEF;
MEMORANDUM OF POINTS AND
AUTHORITIES IN SUPPORT
THEREOF**

FED. R. CIV. P. 12(b)(1) and 12(b)(6)

[Declarations of Angela S. Killoren,
Dong-hun Lee, and Ho-seung Yang
Submitted Concurrently Herewith]

Date: June 1, 2015
Time: 1:30 P.M.
Crtrm.: 6

Assigned to Hon. Stephen V. Wilson

TO THE COURT, ALL PARTIES, AND THEIR ATTORNEYS OF RECORD:

3 **PLEASE TAKE NOTICE** that on June 1, 2015, at 1:30 p.m., or as soon
4 thereafter as defendant CJ E&M America, Inc. (“CJ E&M America”) may be heard
5 before the Honorable Stephen V. Wilson in Courtroom 6 of the above-entitled
6 Court, located at 312 North Spring Street, Los Angeles, CA 90012, CJ America will
7 and hereby does move this Court to dismiss this action for *forum non conveniens*, or
8 in the alternative, under Federal Rule of Civil Procedure Rule 12(b)(1) for lack of
9 standing and Rule 12(b)(6) for failure to state a claim upon which relief can be
10 granted.

11 This motion is supported by this Notice of Motion, the accompanying
12 Memorandum of Points and Authorities; the Declarations of Dong-hun Lee (“Lee
13 Decl.”), Angela S. Killoren (“Killoren Decl.”), and Ho-seung Yang (“Yang Decl.”);
14 the attached exhibits; and such other evidence and arguments as may be presented at
15 or before the hearing on this motion, and all other matters of which the Court may
16 take judicial notice or which it deems appropriate to consider.

17 This motion is made following the conference of counsel pursuant to L.R. 7-
18 3, which took place on April 20, 2015.

Ekwan E. Rhow
Timothy B. Yoo
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By: /s/ Timothy B. Yoo
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

3 This Court can and should decline to hear this case, which involves a Korean
4 plaintiff suing a Korean company and, on an untenable basis, its American
5 subsidiary, over alleged acts or omissions rooted in Korean copyright law that had to
6 have occurred entirely in Korea. In consideration of the enormous inconvenience to
7 the parties of resolving this dispute before this Court, and in the interest of judicial
8 economy, this Court should dismiss this action in its entirety so that it can be refiled
9 in a Korean court, where it can be more appropriately heard. Alternatively, should
10 the Court elect not to exercise its broad discretion to decline to hear this case, it
11 should nevertheless dismiss this action because the Plaintiff lacks standing to sue
12 and in any event has failed to state claims for which this Court can grant it relief.

13 As background, Korean Plaintiff DFSB Kollective Co. Ltd. claims to hold
14 certain overseas rights to sound recordings by various Korean indie-rock bands,
15 which were first published in Korea. Plaintiff claims that Defendants infringed its
16 purported overseas distribution rights to those recordings. In 2011, DFSB initiated a
17 lawsuit in the Seoul Central District Court asserting, as it does here, copyright
18 infringement claims against Defendant CJ E&M Corporation.¹ That lawsuit resulted
19 in a settlement agreement drafted, negotiated, and executed in Korea and governed
20 by Korean law. DFSB now purports to bring similar claims in alleging again that
21 Defendants infringed its purported overseas distribution rights. But because its
22 actual damages would be trivial or none even if it could establish its claims, which it
23 cannot, Plaintiff sued Defendants in this Court instead of in Korea in order to vex
24 Defendants with oppressive logistical burdens and the specter of the enhanced
25 damages available under a U.S. statutory scheme.

²⁷ ¹ The name of Defendant CJ E&M Corporation is erroneously stylized as “CJ
²⁸ E&M, Inc.” in Plaintiff’s complaint.

1 In furtherance of this transparent tactic, and in an attempt to bolster its
 2 lawsuit's attenuated ties to this forum, Plaintiff has tacked on CJ E&M America as a
 3 Defendant, even though CJ E&M America could not have committed any of the
 4 alleged acts on which Plaintiff's claims are based. Apparently recognizing this,
 5 Plaintiff obliquely alleges a civil conspiracy between CJ E&M America and its
 6 Korean parent, CJ E&M Corporation ("CJ E&M"), hinting they could be jointly
 7 liable for the actions of either. But using sleight of hand, Plaintiff cunningly does
 8 not actually assert a civil conspiracy cause of action, since such a claim would be
 9 preempted not to mention vitiated by the absence of an underlying tort.²

10 Fortunately, this Court need not and should not abide Plaintiff's blatant forum
 11 shopping. The doctrine of *forum non conveniens* affords this Court discretion to
 12 dismiss this case since CJ E&M America can show clearly that the inconvenience to
 13 the parties and this Court outbalances Plaintiff's calculated choice of forum. For
 14 example:

- 15 • All of the relevant evidence is located in Korea, as are all of the salient
 fact witnesses.
- 16 • Most if not all of the underlying documents, such as licensing
 agreements that could be at issue and the above-referenced settlement
 agreement that is a defense to Plaintiff's claims, are written in Korean
 and would have to be translated and certified before they could be
 submitted to this Court.
- 17 • This Court would have to interpret and apply Korean law as it relates to
 transfers of copyrights and the proper scope and effect of the prior
 settlement agreement.
- 18 • All of the relevant third parties, such as the artists or the management
 companies that own the underlying copyrights at issue as well as third-
 party content providers who may have indemnity obligations, all reside
 in Korea and likely outside of this Court's jurisdictional reach.
- 19 • It would be expensive and otherwise onerous for Defendants to ensure
 the trial attendance of key witnesses, including third-party witnesses,
 who all reside in Korea. Conversely, resolving this dispute in a Korean
 court would not inconvenience Plaintiff one whit, since it resides in

27 ² See 17 U.S.C. § 301(a); *Laws v. Sony Music Entm't, Inc.*, 448 F.3d 1134, 1137-
 28 38 (9th Cir. 2006).

Korea.

2 Because the inconvenience to the parties and the public is staggeringly
3 disproportionate to Plaintiff's choice of a forum away from its home, this Court can
4 in its prudence dismiss this case in favor of a Korean court.

5 Alternatively, this Court should dismiss Plaintiff’s complaint because the
6 lawsuit itself lacks merit.³ *First*, Plaintiff has no right to bring this action. While it
7 claims to have “been assigned the exclusive right to pursue causes of action for
8 infringement that have accrued in favor of the copyright owners of these works[,]”
9 the Ninth Circuit has held that the bare “right to sue” is insufficient to confer
10 standing for copyright claims. While it therefore must show that it held at least one
11 of the exclusive rights conferred by copyright protection *at the time* of any alleged
12 infringement, Plaintiff claims merely to have “exclusive licenses” to certain works
13 without identifying in what manner, when, and from whom these supposed licenses
14 were received.

15 *Second*, Plaintiff’s pleadings are defective because they fail to state claims for
16 which this Court can grant it relief. Its copyright infringement claim, for instance,
17 fails to identify specific instances of actual infringement—e.g., which works were
18 infringed on which specific dates and by what specific acts. At most, Plaintiff
19 alleges that certain sound recordings were made available. But other courts in this
20 District have held that the distribution rights of a copyright holder are not infringed
21 absent an “actual dissemination” of copies, which Plaintiff has failed to allege.
22 Likewise, Plaintiff’s second cause of action, for violations of the Digital Millennium
23 Copyright Act (“DMCA”), fails as a matter of law because the type of information
24 that Plaintiff alleges was altered here cannot be “copyright management

³ Since a motion to dismiss for *forum non conveniens* is not based on the actual merits of the action, this Court can consider dismissal *before* reaching any threshold objections such as standing or jurisdiction. *Sinochem Int'l Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422 (2007).

1 information” under the statute.

2 For all these reasons, and for the reasons set forth more fully below, this
 3 Court should dismiss this action.

4 **II. FACTUAL BACKGROUND**

5 **A. The Parties**

6 Defendant CJ E&M⁴ is a Korean entertainment and media content company
 7 comprised of five core divisions: film, cable broadcast, music, online, and live
 8 performances. The music division is responsible for all music licensing, including
 9 licensing for recording artists under CJ E&M’s management as well as licensing
 10 content to and from third parties. (Lee Decl. ¶ 3.) This includes curating all of the
 11 musical content on the “Mnet” website (the online portal for the company’s music
 12 broadcast channel), which is administered by CJ E&M’s online division. (Lee Decl.
 13 ¶ 11.)

14 Meanwhile, CJ E&M America is essentially the American arm for CJ E&M’s
 15 movie and cable broadcast divisions. (Killoren Decl. ¶ 3.) CJ E&M America is not
 16 involved in music licensing whatsoever, nor is it involved in the back-end or front-
 17 end administration of the “Mnet” website. (Killoren Decl. ¶¶ 4-7.) Therefore, CJ
 18 E&M America does not have the access or wherewithal to tamper with any
 19 copyright management information relating to the asserted sound recordings. As a
 20 media content company, CJ E&M America’s business is creating and acquiring
 21 innovative new film and television content. By contrast, Plaintiff is, in essence, a
 22 copyright troll, in the business of attempting to acquire and monetize others’ music-
 23 related copyrights, which, again, CJ E&M America has no involvement in.

24 For example, Plaintiff sued Defendant CJ E&M in a Korean court in 2011,
 25 alleging that CJ E&M had tampered with the same type of information it alleges was
 26 altered here and asserting all of the songs listed in Exhibit 1 of its current complaint

27
 28 ⁴ CJ E&M has not been served and has not yet appeared in this action.

1 (“Compl.”). (See Compl. ¶ 29; Lee Decl. ¶ 5.) While the Korean court in that
 2 action entered a final judgment as to two discrete issues, Plaintiff covenanted as part
 3 of a concurrent settlement agreement not to sue CJ E&M for civil damages again
 4 based on any claims it had asserted in that litigation (the “2012 settlement
 5 agreement”). (Lee Decl. ¶ 7.)

6 In its current complaint, Plaintiff attaches a list of 303 sound recordings for
 7 which it claims to have certain “exclusive rights[.]” (Compl. ¶¶ 13-15.) Again,
 8 these are a complete subset of the 3,947 sound recordings that Plaintiff previously
 9 asserted in the 2011 Korean litigation.

10 **B. Summary of Dispute**

11 Here, Plaintiff asserts claims for copyright infringement and violations of the
 12 DMCA against CJ E&M and CJ E&M America based on three categories of alleged
 13 bad acts:

14 (1) distribution of music in the U.S. through the Beats Music service;
 15 (2) altering information relating to the music distributed through Beats
 16 Music; and
 17 (3) distribution of music in the U.S. through the “Mnet” website, which is
 18 housed in Korea.

19 (Compl. ¶¶ 2, 3, 22-27, 30-37, 50.) Plaintiff alleges only the first two categories
 20 against CJ E&M America. *Id.*

21 The key anticipated issues in resolving the dispute, whether in a U.S. or
 22 Korean court, are as follows:

- 23 • **Validity of the underlying copyrights.** A U.S. copyright registration is
 24 only prima facie evidence that the claimed work is validly protected by
 25 copyright. Here, the asserted sound recordings were originally
 26 published in Korea, and thus, presumptively covered by Korean
 27 copyright law, under which their validity (or lack thereof) must be
 28 determined.
- **Ownership of the overseas distribution rights.** On the one hand,
 Plaintiff claims to own the distribution rights to the asserted works.
 Since a copyright vests in the original author, or in some cases the
 author’s employer, Plaintiff must have acquired any rights in them, if at

1 all, by assignment from the original or a subsequent copyright owner.

2 On the other hand, CJ E&M will likely claim that it owns the overseas
3 distribution rights to sound recordings it distributes outside of Korea.

- 4 • ***Scope and preclusive effect of the release in the 2012 settlement
agreement.*** A court will have to determine the scope and effect of the
5 release language in the 2012 settlement agreement, which is written in
Korean and governed by Korean law.
- 6 • ***Instrumentalities of the alleged infringement.*** Plaintiff alleges that
Defendants distributed copyrighted work on the Beats Music streaming
7 service as well as on the “Mnet” website. How and which music was
provided to those platforms, and when by whom it was provided, are
8 therefore central issues.

9

10 III. ARGUMENT

11 A. ***This Court Should Dismiss This Action Based On *Forum Non
Conveniens*.***

13 Under the doctrine of *forum non conveniens*, a court can dismiss an action in
14 favor of litigation in a more convenient foreign forum if a defendant establishes:
15 (i) that an alternative and adequate foreign forum exists; and (ii) that the balance of
16 the relevant private and public interests weighs in favor of dismissal. *Sinochem Int'l
17 Co. v. Malaysia Int'l Shipping Corp.*, 549 U.S. 422, 432 (2007); *Lueck v.
18 Sundstrand Corp.*, 236 F.3d 1137, 1142 (9th Cir. 2001). “The *forum non
19 conveniens* determination is committed to the sound discretion⁵ of the trial court[,]”
20 and in making such a determination based on the unique facts of each case, the court
21 should primarily consider the convenience of the parties and the court. *Piper
22 Aircraft Co. v. Reyno*, 454 U.S. 235, 256-57 (1981).

23 Put differently, a court can and should dismiss an action if a moving party
24 clearly establishes “such oppression and vexation of a defendant as to be out of

25
26
27
28 ⁵ “The district court's decision ‘may be reversed only when there has been a clear
abuse of discretion; where the court has considered all relevant public and private
interest factors, and where its balancing of these factors is reasonable, its decision
deserves substantial deference.’” *Lueck*, 236 F.3d at 1143 (citations omitted).

1 proportion to the plaintiff's convenience, which may be shown to be slight or
 2 nonexistent[.]” *Cheng v. Boeing Co.*, 708 F.2d 1406, 1409 (9th Cir. 1983) (citing
 3 *Miskow v. Boeing Co.*, 664 F.2d 205, 208 (9th Cir. 1981)). That is, if “the balance
 4 of conveniences suggests that trial in the chosen forum would be unnecessarily
 5 burdensome for the defendant or the court, dismissal is proper.” *Lockman Found. v.*
 6 *Evangelical Alliance Mission*, 930 F.2d 764, 767 (9th Cir. 1991) (citation omitted).

7 Further, while a plaintiff's choice of forum is normally accorded due
 8 deference, a court should accord less deference where, as here, the plaintiff is a
 9 foreign citizen that has chosen a forum outside of its home forum. *See Piper*
 10 *Aircraft Co.*, 454 U.S. at 247 (“a foreign plaintiff's choice deserves less deference”).

11 **1. Korea is an available and adequate forum.**

12 A forum is considered “available” when all defendants are amenable to suit in
 13 that forum and that forum permits suits involving the subject matter of the dispute.
 14 *Lueck*, 236 F.3d at 1143. An alternative foreign forum is “adequate” if it provides
 15 the plaintiff a potential avenue for redress. *See Piper Aircraft Co.*, 454 U.S. at 254
 16 n.22. Even if particular causes of action or certain specific remedies are not
 17 available in the foreign forum, it is considered adequate so long as (i) it permits
 18 litigation of the subject matter while providing adequate procedural safeguards and
 19 (ii) the remedy available is not so inadequate as to constitute no remedy at all. *See*
 20 *Ceramic Corp. of America v. Inka Maritime Corp.*, 1 F.3d 947, 949 (9th Cir. 1993).
 21 A Korean court is clearly an available and adequate foreign forum.

22 *First*, both Defendants are amenable to suit in a Korean court. Defendant CJ
 23 E&M is a Korean corporation with its principal place of business in Seoul, Korea,
 24 (Complaint ¶ 7), and it therefore resides within the jurisdiction of the Korean courts.
 25 (Yang Decl. ¶ 4.) Furthermore, should this Court dismiss this action on the basis of
 26 *forum non conveniens*, CJ E&M America would submit to the jurisdiction of a
 27 Korean court in order to defend itself against these allegations. A Korean court is
 28 therefore an available forum. *See Lockman Found.*, 930 F.2d at 768 (“Because the

1 record shows that [defendant] has agreed to submit to Japanese jurisdiction, and
 2 because [other defendants] reside in Japan, the threshold test is satisfied.”).

3 *Second*, Korean law provides stern protections for copyrighted works, so
 4 Plaintiff could therefore sue Defendants in a Korean court based on the same subject
 5 matter at issue here, i.e., purported overseas distribution rights to copyrighted works.
 6 (Yang Decl. ¶¶ 3, 5.) In fact, as Plaintiff underscores in its own complaint, *it has*
 7 *done so before*. (Compl. ¶ 29) (“In August 2012, the Seoul Central District (11th
 8 Civil Case Division) in South Korea entered a final judgment against CJ E&M,
 9 requiring it to pay 50,000,000 KRW”). In the 2011 Korean litigation, Plaintiff
 10 sought redress for CJ E&M allegedly “issuing duplicate ISRCs for digital music
 11 content that DFSB Kollective held overseas distribution rights to[,]” *id.*, which are
 12 substantially similar to Plaintiff’s current allegations. (See, e.g., Compl. ¶¶ 2, 27.)

13 *Third*, a Korean court would provide adequate procedural safeguards and
 14 sufficient remedies. (Yang Decl. ¶¶ 3, 8.) While a Korean court *might* not award
 15 the enhanced statutory damages that Plaintiff so plainly covets,⁶ a foreign forum can
 16 be adequate even if the range of remedies or potential recoveries available in that
 17 forum are less extensive than in a U.S. federal court. *See Piper*, 454 U.S. at 247;
 18 *Creative Technology, Ltd. v. Aztech Systems PTE*, 61 F.3d 696, 703 (9th Cir. 1995).

19 For instance, in *Lockman Foundation*, an American company sued several
 20 Japanese defendants in a U.S. district court, asserting copyright claims and other
 21 causes of action, and the district court dismissed the action based on *forum non*
 22 *conveniens*. While the American plaintiff raised on appeal the ground that it would
 23 be prevented from pursuing its U.S.-specific causes of action and possible enhanced
 24 damages in the foreign forum, in affirming the district court’s ruling, the Court of

25
 26 ⁶ A Korean court would as a threshold matter determine which substantive law to
 27 apply to Plaintiff’s infringement claims. (Yang Decl. ¶¶ 9-10.) If the court
 28 determined that U.S. copyright law applied, it could award corresponding remedies.
Id.

1 Appeals observed that “the ‘possibility of an unfavorable change in the law’ is not to
 2 be given conclusive or substantial weight in a *forum non conveniens* inquiry.”
 3 *Lockman Found.*, 930 F.2d at 768-69 (citations omitted). Rather, to succeed in
 4 challenging the adequacy of an alternative foreign forum, a plaintiff must show that
 5 its possible recovery would be “so clearly inadequate or unsatisfactory that it is no
 6 remedy at all.” *Id.* (citation omitted).

7 But far from offering “no remedy at all,” a Korean court can award significant
 8 monetary damages for claims such as the ones asserted here, *as Plaintiff trumpets in*
 9 *its own complaint* (Compl. ¶ 29). For instance, a copyright owner can claim
 10 statutory damages of up to 50,000,000 KRW (roughly \$50,000 USD) per work for
 11 infringement. (Yang Decl. ¶ 8.) A Korean court can also provide injunctive relief.
 12 and thereby enjoin the potential infringement of a copyright owner’s work (Yang
 13 Decl. ¶ 3.) Moreover, the statute of limitations for copyright claims is generally
 14 three years, so Plaintiff would have ample time to refile its suit in Korea. (Yang
 15 Decl. ¶ 5.)

16 And in any event, a Korean court could apply U.S. copyright law if it
 17 determined, under its choice of law principles, that U.S. law applied to the dispute,
 18 (Yang Decl. ¶¶ 9-10), which further buttresses the adequacy of a Korean court. In
 19 *Creative Technology*, a Singaporean company sued a Singaporean corporation and
 20 its wholly-owned American subsidiary for copyright infringement. In affirming the
 21 district court’s granting of defendant’s motion to dismiss for *forum non conveniens*
 22 in favor of a Singaporean court, the Court of Appeals cited, in addition to the
 23 remedies available under the Singaporean Copyright Act, the availability of U.S.
 24 copyright law in the foreign forum as evidence of its adequacy. *Creative*
 25 *Technology*, 61 F.3d at 702-03.

26 Therefore, because a Korean court would allow Plaintiff to sue for copyright
 27 infringement while providing adequate procedural safeguards, and because Plaintiff
 28 cannot reasonably dispute its adequacy (having sued there before the same type of

1 relief), a Korean court is an available and adequate foreign forum for this dispute.

2 **2. It is far more convenient for the parties to litigate this
3 dispute in Korea.**

4 The private interest factors that courts consider when weighing the
5 convenience of the parties include: (i) the residence of the parties and the witnesses;
6 (ii) access to the physical evidence and other sources of proof; (iii) whether
7 unwilling witnesses can be compelled to testify; (iv) the cost of bringing witnesses
8 to trial; (v) the enforceability of the judgment; and “all other practical problems that
9 make trial of a case easy, expeditious and inexpensive.” *See Lueck*, 236 F.3d at
10 1145-46 (citing *Gulf Oil Corp. v. Gilbert*, 330 U.S. 501 (1947)). “The district court
11 should look to any or all of the above factors which are relevant to the case before it,
12 giving appropriate weight to each. It should consider them together in arriving at a
13 balanced conclusion.” *Id.* (citations omitted). On balance, a Korean court would be
14 far more convenient for Defendants while Plaintiff would not be concurrently
15 inconvenienced by litigating in its home forum.

16 First, since nobody at CJ E&M America is involved in music licensing or
17 administration of the “Mnet” website, all of the salient witnesses and sources of
18 evidence concerning this action must be located, if anywhere, in Korea, where it
19 would be enormously expensive and burdensome for the parties to access during
20 litigation in this forum. (Killoren Decl. ¶ 9.)

21 For example, for music content that it distributes, CJ E&M either owns the
22 rights directly or acquires the necessary distribution rights via licenses from third-
23 party content providers, such as Neowiz Internet. This is all handled by Dong-hun
24 Lee and his team at CJ E&M in Korea, which also curates all of the music that CJ
25 E&M provides to the Beats Music streaming service. (Lee Decl. ¶¶ 3, 8.) Hence,
26 documents proving those licensing arrangements as well as the relevant underlying
27 licenses themselves are all located in Korea. (Lee Decl. ¶¶ 9-10.) Moreover, the
28 “Mnet” website is administered entirely in Korea, and its music content is curated

1 and accessible only in Korea. (Lee Decl. ¶ 11; Killoren Decl. ¶ 8.)

2 It would likewise be expensive and otherwise onerous for Defendants to
 3 ensure the attendance of key witnesses, including third-party witnesses as discussed
 4 *infra*, at a trial in this Court.

5 *Second*, most if not all of the underlying documents, including the licensing
 6 agreements that would be at issue, are all written in Korean, and would therefore
 7 have to be translated and certified before they could be submitted to this Court, a
 8 fact that favors dismissal. *See, e.g., Mars Inc. v. Kabushiki-Kaisha Nippon Conlux*,
 9 24 F.3d 1368, 1375 (Fed. Cir. 1994) (difficulty of “having to agree on the proper
 10 translation of [Japanese] laws, documents and other communications” supported
 11 dismissal.)

12 For example, Dong-hun Lee, in charge of music licensing for CJ E&M, and
 13 his team correspond internally and externally almost exclusively in Korean, and the
 14 licensing agreements for Korean music that his team deals with are likewise
 15 predominantly if not entirely written in Korean. (Lee Decl. ¶¶ 4, 9, 10.)

16 Furthermore, the 2012 Korean settlement agreement, one of the primary
 17 defenses to this action, is written entirely in Korea. (Lee Decl. Exh. A.)

18 *Third*, since all of the relevant third parties all reside in Korea and likely
 19 outside the jurisdictional reach of this Court, Defendants’ ability to obtain discovery
 20 from them or compel their attendance at trial would be significantly hampered. For
 21 example, Plaintiff’s purported ownership claims to the copyrights at issue rest on its
 22 assertion that it “has exclusive licenses” to them, meaning they were ostensibly
 23 received from the artists, the artists’ management companies, or some other third
 24 party who originally held the rights. While Defendants would therefore be entitled
 25 to discovery from such third parties, the subpoena power of this Court may not
 26 extend so far as to ensure compliance with Defendants’ discovery requests or
 27 attendance at trial. A Korean court, on the other hand, would face no such difficulty
 28 in compelling evidence from unwilling third parties residing in Korea. (Yang Decl.

1 ¶ 12.)

2 Notably, the relative availability of compulsory process to compel the
 3 attendance of significant unwilling witnesses at trial is considered the most
 4 important private interest factor. *See Howe v. Goldcorp Invest. Ltd.*, 946 F.2d 944,
 5 951 (1st Cir. 1991) (because “only Canadian courts, and not courts within the
 6 United States, have the legal power to compel testimony of twelve Canadian
 7 potential witnesses who are not under the control of either party” the private
 8 interests weighed heavily in favor of dismissal). Similarly here, this factor weighs
 9 heavily in favor of dismissal because only Korean courts could compel the
 10 attendance of many of the key witnesses, who all reside in Korea.

11 Furthermore, Defendants would have difficulty in this forum impleading
 12 required Korean third parties that may owe an indemnity obligation to CJ E&M,
 13 such as Neowiz Internet, a Korean third-party from whom CJ E&M obtains some its
 14 music content and who resides outside the jurisdiction of this Court. This is a factor
 15 that favors dismissal. *See Allstate Life Ins. Co. v. Linter Group Ltd.*, 994 F.2d 996,
 16 1002 (2d Cir. 1993) (inability to implead other parties is factor favoring dismissal);
 17 *Baumgart v. Fairchild Aircraft Corp.*, 981 F.2d 824, 828 (5th Cir. 1993) (dismissal
 18 appropriate where defendant would be able to implead third party in foreign forum,
 19 but not in district court).

20 *Finally*, Plaintiff would not be inconvenienced by litigating in its home
 21 forum. The only third parties relevant to this dispute residing outside of Korea are
 22 Beats Music and MediaNet, both Delaware corporations, and any relevant evidence
 23 they have are equally accessible from Defendant CJ E&M. Furthermore, since
 24 Beats Music conducts substantial business in Korea, a Korean court could exercise
 25 jurisdiction over it and ensure that it makes relevant discovery.⁷ Otherwise, all of
 26

27 ⁷ As a further safeguard, Plaintiff could as needed submit an application under
 28 Section 1782, which allows a party to a foreign legal proceeding to apply to a U.S.

1 the relevant evidence, fact witnesses, and related third parties are located in Korea
 2 and within the purview of the Korean courts.

3 The balance of these private interest factors therefore tips not just slightly, but
 4 significantly, in favor of a Korean forum.

5 **3. The Court should dismiss this action in the interest of
 6 judicial economy and the public's convenience.**

7 Courts consider the following public interest factors: (i) local interest of the
 8 lawsuit; (ii) avoidance of unnecessary problems in conflicts of laws, or in
 9 application of foreign laws; (iii) burden on local courts and juries; (iv) congestion in
 10 the court; and (v) the costs of resolving a dispute unrelated to this forum. *See Lueck*,
 11 236 F.3d at 1147. The public interest factors weigh against resolving this dispute
 12 before this Court.

13 *First*, since the works at issue were recorded and published in Korea, this
 14 Court will need to apply Korean law as it relates to the ownership of the copyrights
 15 in those works, including specifically whether any purported assignment of rights
 16 was effective and the nature of the interest assigned, if any. *See Lahiri v. Universal*
 17 *Music & Video Dist.*, 513 F. Supp. 2d 1172, 1176 n.4 (C.D. Cal. 2007) (“Initial
 18 ownership of a copyrighted work is determined by the laws in the work’s country of
 19 origin. . . . Because [work was created in a foreign country], that country’s copyright
 20 laws are applied to determine initial ownership.”)⁸

21 Moreover, this Court will need to interpret the scope and effect of the release
 22 court to obtain evidence for use in that foreign proceeding. 28 U.S.C. § 1782.

23 ⁸ The applicable choice of law in the international copyright context is not
 24 necessarily the same for all issues, even within a single infringement action. *See*
Itar-Tass Russian News Agency v. Russian Kurier, Inc., 153 F.3d 82, 90 (2d Cir.
 25 1998). For instance, while the question of copyright ownership of a work is
 26 governed by the laws of that work’s country of origin, *Lahiri*, 513 F. Supp. at 1176
 27 n.4, the issue of whether the work was infringed is often governed by the laws of the
 28 country in which the alleged infringement occurred. *See Itar-Tass*, 153 F.3d at 90-91.

1 language contained in the 2012 Korean settlement agreement, a defense to
 2 Plaintiff's current lawsuit, under Korean law. As the Supreme Court has held, "the
 3 need to apply foreign law point[s] towards dismissal." *Piper*, 454 U.S. at 260.

4 *Second*, there is no local interest in having this case resolved before this
 5 Court, since Plaintiff's claims are based on acts that must have occurred, if at all,
 6 entirely in Korea concerning Korean sound recordings that are presumably covered
 7 by Korean copyright law. While CJ E&M America resides in this forum, as
 8 discussed *supra*, it could not have committed any of the acts that Plaintiff alleges in
 9 its complaint. Hence, this lawsuit concerns only the alleged actions of the Korean
 10 Defendant, CJ E&M. As such, it is essentially a dispute between two Korean
 11 companies, a fact that favors dismissal. In confronting a nearly identical set of facts
 12 as here, the Court of Appeals in *Creative Technology* concluded that the public
 13 interests tipped towards dismissal:

14 This is essentially a dispute between two Singapore corporations as to
 15 which of them was the original developer of the disputed [intellectual
 16 property]. *This is not a case involving the piracy of American made*
products or substantively involving American companies. As such, the
 17 United States' interest in resolving this controversy and the relation of
 18 the jury community to this controversy are extremely attenuated and do
 not sway the balance against dismissal. The presence of [a wholly-
 owned American subsidiary as a defendant], influences our analysis
 very little.

19 *Creative Technology*, 61 F.3d at 704 (emphasis added).

20 While Plaintiff might argue there could be a slight local interest insofar as the
 21 alleged infringement occurred through the supposed distribution of works in the
 22 U.S., it cannot show there is a significant local interest in the Korean works at issue,
 23 the overseas distribution rights pertaining to which are governed by Korean
 24 copyright law. The only discernible interest, then, pertains to the U.S.'s general
 25 treaty obligations in according copyright protection to foreign works, which is only
 26 nebulously tied to this forum's locality and therefore insufficient to countervail this
 27 forum's citizens' burden in resolving this lawsuit in this Court instead of a Korean
 28

1 court. *See id.* (“[U.S.] copyright laws do not serve this purpose of protecting
 2 consumers. They are designed to protect the property rights of copyright owners.’
 3 As such, the key interests in this dispute lie with the Singapore corporations, not the
 4 American public.”) (citations omitted).

5 The only remaining possible nexus to this forum is that Beats Music and
 6 MediaNet are Delaware corporations with offices within this District, and Plaintiff
 7 claims that Defendants uploaded certain sound recordings to the Beats Music
 8 streaming service via MediaNet. (Compl. ¶¶ 2, 25-27.) But this lawsuit does not
 9 concern the rights and duties (or breaches thereof) as between any party and Beats
 10 Music or MediaNet. Rather, this Court is asked only to determine the respective
 11 rights as between Plaintiff on the one hand and CJ E&M and CJ E&M America on
 12 the other. But since there is at most a trivial local interest regarding overseas rights
 13 to sound recordings by Korean indie-rock bands, there are no local interests that
 14 would weigh against resolving this action in a Korean forum.

15 Meanwhile, the local Korean interest in resolving this dispute is strong. The
 16 primary alleged tortfeasor is a Korean corporation, the largest media and
 17 entertainment conglomerate in the country. Plaintiff is also a Korean company, and
 18 it is suing based on a claimed ownership right to Korean sound recordings. A
 19 Korean court therefore has the strongest local interest in resolving this dispute.

20 *Third*, this Court is already congested and it would be a waste of resources to
 21 ask local citizens to serve on a jury for a matter that is so unrelated to this forum.
 22 According to publicly accessible records,⁹ the median time to trial for civil actions
 23 in this District—about 20 months—is longer than in any district within the Ninth
 24 Circuit.¹⁰ It would not serve the public interest to increase that load and further tie
 25

26 ⁹ *United States District Courts – National Judicial Caseload Profile* (2014),
 27 <http://www.uscourts.gov/Statistics/FederalCourtManagementStatistics/district-courts-december-2014.aspx>.

28 ¹⁰ Conversely, the typical time to trial for a copyright infringement action in a

1 up judicial resources with a case that can be more conveniently heard elsewhere.
 2 Moreover, it would be a waste of resources to ask the citizens of this District, who
 3 have no interest in the matter, to hear a case that has only specious ties to the forum
 4 in the first place.

5 Therefore, on balance, the public interest factors weigh heavily in favor of a
 6 Korean forum.

7 **4. This motion should be granted based on *forum non*
 8 *conveniens*.**

9 In summary, as CJ E&M America has clearly shown, Korea is an available
 10 and adequate forum in which to resolve the present dispute. It would be far more
 11 convenient for the parties to litigate in a Korean court, and conversely, oppressively
 12 burdensome for them to do so in this Court. Moreover, there is no concurrent
 13 inconvenience to Plaintiff in bringing an action in its home forum against
 14 Defendants, who are amenable to suit there.

15 For these reasons, and because the balance of the private and public interests
 16 point toward dismissal, this Court can and should in its broad discretion dismiss
 17 Plaintiff's complaint in its entirety so that this lawsuit can be refiled in a Korean
 18 court.

19 Alternatively, should this Court elect to consider the substance of Plaintiff's
 20 lawsuit, it should nevertheless dismiss Plaintiff's complaint because it lacks
 21 standing to sue and in any event has failed to state claims upon which this Court can
 22 grant it relief.

23 **B. Plaintiff Has Failed To State A Claim For Relief.**

24 To survive a motion to dismiss under Rule 12(b)(6), a plaintiff's complaint
 25 "must contain sufficient factual matter, accepted as true, to 'state a claim to relief

26 Korean court is approximately one year. (Yang Decl. ¶ 11.) The 2011 Korean
 27 litigation, for instance, was filed in September 2011 and reached final judgment by
 28 August 2012, less than one year later. (Lee Decl. ¶ 5.)

1 that is plausible on its face.”” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting
 2 *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). A complaint must
 3 therefore contain more than “labels and conclusions” or a “formulaic recitation of
 4 the elements of a cause of action” and must contain factual allegations sufficient to
 5 “raise a right to relief above the speculative level.” *Bell Atlantic Corp.*, 550 U.S. at
 6 555; *see also Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir. 2009). And
 7 while the Court must accept as true all well-pleaded factual allegations in the
 8 complaint, it need not accept the truthfulness of Plaintiff’s legal conclusions. *Iqbal*,
 9 556 U.S. at 678 (court is “not bound to accept as true a legal conclusion couched as
 10 a factual allegation”).

11 **1. Plaintiff has failed to state a claim for copyright
 12 infringement.**

13 To establish a claim for copyright infringement, Plaintiff has to show: (i) that
 14 it owns a valid copyright; and (2) that defendants violated one of the exclusive rights
 15 conferred by that valid copyright. *Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 213 F.
 16 Supp. 2d 1146, 1165-66 (C.D. Cal. 2002).

17 As it relates to its claimed ownership interest in the sound recordings at issue,
 18 Plaintiff makes only two conclusory assertions: (1) “[Plaintiff] has *exclusive license*
 19 to reproduce, distribute, publicly perform and publicly display in the United States
 20 numerous works of Korean pop music . . .” (Compl. ¶ 1) (emphasis added); and (2)
 21 “Plaintiff has the *exclusive right* to reproduce, distribute, publicly perform and
 22 publicly display certain sound recordings within the United States” (Comp. ¶ 13)
 23 (emphasis added).

24 Beyond these bare legal conclusions, which this Court should not accept as
 25 true, Plaintiff fails to state for each sound recording: from whom it acquired these
 26 purported rights, on which dates, and by what instruments. That is, while it purports
 27 to own distribution rights for 303 sound recordings, for *not one* of those does it
 28 identify from where those rights came from. To wit, Plaintiff has not pled *any*

1 ultimate facts that would establish that it has the “exclusive” rights it claims to have.
 2 For instance, under both U.S. and Korean copyright law,¹¹ copyright ownership
 3 vests in the work’s original author, unless it was a “work made for hire,” in which
 4 case it vests in the author’s employer. 17 U.S.C. § 201; (Yang Decl. ¶ 6.) Neither
 5 scenario applies here, since Plaintiff is not and makes no claim to be the original
 6 owner of the asserted sound recordings. (See Compl. Exh. 1.) Hence, if Plaintiff
 7 holds any rights at all, it must have received them from the original copyright
 8 owners, presumably the artists or the artists’ management companies. Yet Plaintiff
 9 alleges no facts upon which this Court can infer that Plaintiff has an ownership
 10 interest in *any* one of the sound recordings it asserts.¹²

11 Likewise, Plaintiff’s claim fails because Plaintiff has failed to allege any acts
 12 by which CJ E&M America has actually infringed Plaintiff’s purported overseas
 13 distribution rights. A complaint alleging copyright infringement must “plead with
 14 specificity the acts by which a defendant has committed copyright infringement.”
 15 *Marvullo v. Gruner & Jahr*, 105 F. Supp. 2d 225, 230 (S.D.N.Y. 2000). To
 16 withstand a motion to dismiss, then, a complaint must allege with specificity “by
 17 what acts during what time the defendant[s] infringed the copyright.” *Id.*

18 Regarding infringement of Plaintiff’s purported distribution rights by CJ
 19 E&M America, however, Plaintiff’s complaint states only that: (1) “Without DFSB
 20 Kollective’s permission . . . CJ E&M America, Inc. . . . distributed to the Beats
 21 Music service . . . these sound recordings” (Compl. ¶ 2); and (2) “Since around 2014
 22 . . . CJ E&M America . . . distributed to MediaNet (and, through MediaNet, for

23 ¹¹ While this Court will likely have to apply Korean copyright law to the issue of
 24 copyright ownership, it need not choose the applicable law for purposes of this
 25 motion: Plaintiff’s claims fail under either choice of law.

26 ¹² For example, under both U.S. and Korean copyright law, a transfer of an interest
 27 in copyright must be in a signed writing. [Cite.] But Plaintiff does not state in its
 28 complaint how it obtained the rights it claims to have—whether by a signed writing
 or otherwise.

1 further distribution to the U.S. public) sound recordings, including but not
 2 necessarily limited to the nineteen sound recordings by Swallow and Rhymebus”
 3 (Compl. ¶ 25). In other words, Plaintiff’s bases its infringement claim against CJ
 4 E&M America entirely on the allegation that CJ E&M America provided nineteen
 5 sound recordings to Beats Music via MediaNet.¹³ This is insufficient to state a
 6 claim for relief.

7 *First*, for those nineteen sound recordings allegedly provided to Beats Music,
 8 Plaintiff does not identify specific instances in which any of those recordings were
 9 actually downloaded or streamed in the U.S. Making copyrighted works available
 10 for consumption by others does not, by itself, violate the copyright owner’s right of
 11 distribution. *See In re Napster, Inc.*, 377 F. Supp. 2d 796, 802 (N.D. Cal. 2005)
 12 (copyright owner must prove that defendant “actually disseminated” copies of the
 13 copyrighted work to members of the public); *accord Perfect 10 v. Google, Inc.*, 416
 14 F. Supp. 2d 828, 844 (C.D. Cal. 2006) (“A distribution of a copyrighted work
 15 requires an ‘actual dissemination’ of copies.”) Plaintiff has not alleged that copies
 16 of any of the sound recordings were actually disseminated to the public, i.e., that any
 17 distribution occurred. Therefore, Plaintiff’s complaint fails to state a claim for relief
 18 against CJ E&M America because among other reasons it has not alleged any acts of
 19 actual infringement by CJ E&M America.

20 *Second*, for any *other* sound recordings contained in Exhibit 1 of the
 21 complaint or otherwise, Plaintiff has not pled any facts specifically against CJ E&M
 22 America to support its claim. Among other things, Plaintiff fails to describe with
 23 sufficient particularity which titles were involved in any other alleged infringement,
 24 how they were supposedly infringed, and by what acts.

25
 26 ¹³ To support its DMCA claim, Plaintiff alleges that “CJ E&M America submitted
 27 ISRCs and UPCs, via MediaNet, to Beats for each of these recordings [that] were
 28 different from the ISRCs and UPCs originally and permanently assigned by DFSB
 Kollective to each of the recordings.” (Compl. ¶ 27.)

1 Thus, Plaintiff has failed to state a claim for copyright infringement against
 2 CJ E&M America, and its first cause of action should therefore be dismissed
 3 without leave to amend.

4 Furthermore, Plaintiff cannot attribute acts by Defendant CJ E&M, e.g.,
 5 operation of the “Mnet” website or other acts, to CJ E&M America based on an
 6 enterprise theory of liability because any civil conspiracy claim based on copyright
 7 infringement would be preempted by the Copyright Act. *See, e.g., Laws v. Sony*
 8 *Music Entm’t, Inc.*, 448 F.3d at 1143. There are generally only two scenarios in
 9 which a defendant can be held secondarily liable for copyright infringement: (1)
 10 vicarious infringement and (2) contributory infringement. Plaintiff has not asserted
 11 those causes of action here, likely because its pleadings cannot support either theory.
 12 For vicarious copyright infringement, a plaintiff has to show that defendant had the
 13 right and ability to supervise the allegedly infringing activity. *A&M Records, Inc. v.*
 14 *Napster Inc.*, 239 F.3d 1004, 1022 (9th Cir. 2001). For contributory infringement, a
 15 plaintiff has to show that the defendant specifically knew of the direct infringement
 16 and either induced, caused, or materially contributed to it. *Id.* at 1019. In addition
 17 to its failure to plead an underlying direct infringement, Plaintiff has not pled any
 18 facts relating to CJ E&M America’s supervision over or inducement of any
 19 allegedly infringing acts by CJ E&M. Hence, to the extent it purports to assert
 20 claims against CJ E&M America for alleged acts by CJ E&M, Plaintiff’s copyright
 21 cause of action should be dismissed without leave to amend on this further
 22 independent ground.

23 **2. Plaintiff has failed to state a claim for violations of the**
 24 **DMCA.**

25 Section 1202 of the DMCA prohibits the intentional removal or alteration of
 26 any copyright management information with knowledge that doing so “would
 27 induce, enable, facilitate, or conceal” copyright infringement. 17 U.S.C. § 1202. To
 28 establish violations of Section 1202 of the DMCA, Plaintiff must show that CJ

1 E&M America intentionally removed or altered “copyright management
 2 information” within the meaning of the statute, knowingly distributed incorrect
 3 copyright management information, or knowingly distributed works containing
 4 altered or removed copyright management information. *See* 17 U.S.C. § 1202.
 5 Plaintiff has failed to state a claim for relief against CJ E&M America because
 6 among other reasons: (1) CJ E&M America has not distributed any works; and (2)
 7 the information that Plaintiff alleges was altered is not “copyright management
 8 information” under the statute.

9 Plaintiff purports to base its DMCA claim on the following categories of
 10 information it alleges was altered: (1) International Standard Recording Codes
 11 (“ISRCs”); (2) Universal Product Codes (“UPCs”); (3) sound recording copyright
 12 notices; and (4) copyright notices for the underlying works. (Compl. ¶ 50.) Plaintiff
 13 alleges that by so doing, CJ E&M America tampered with “copyright management
 14 information” in contravention of the DMCA. *Id.* Plaintiff’s claim fails.

15 *First*, as a threshold matter, Plaintiff does not allege that *CJ E&M America*
 16 intentionally removed or altered any copyright notices. Rather, it states plainly that
 17 “**Beats incorrectly identifies ‘CJ E&M’** or another Korean company, Neowiz
 18 Internet, as the owner of the copyrights for these sound recordings” (Compl. §
 19 28) (emphasis added.) Thus, to the extent it rests its claims on the alleged
 20 distribution of works with altered copyright notices, Plaintiff’s claim fails because it
 21 has failed to plead that CJ E&M America actually distributed any song recordings,
 22 with or without copyright notices, as discussed *supra*.

23 *Second*, ISRCs and UPCs are not “copyright management information.” Both
 24 UPCs and ISRCs exist independently of copyright. Universal Product Codes are
 25 used to track any number of trade items in retail stores, from grocery items to
 26 consumer hardware, and not just musical recordings, primarily for inventory.
 27 Likewise, ISRCs are used to identify sound recordings “independent of . . . the

1 rights holders involved.”¹⁴ Subsuming these under the definition of “copyright
 2 management information” would invite an impossibly broad application of Section
 3 1202. Indeed, this District has applied a narrow interpretation of “copyright
 4 management information” that does not encompass ISRCs or UPCs. *See also*
 5 *Textile Secrets Int'l, Inc. v. Ya-ya Brand, Inc.*, 524 F. Supp. 2d 1184, 1201 (C.D.
 6 Cal. 2007) (DMCA did not apply to defendant’s removal of plaintiff’s copyright
 7 information from protected work). To be actionable under the DMCA if altered, the
 8 “copyright management information” must “function as a component of an
 9 automated copyright or management system.” *IQ Group Ltd. v. Wiesner Publ’g*
 10 *Inc.*, 409 F. Supp. 2d 587, 597 (D.N.J. 2006) (a company’s logos and hyperlinks did
 11 not fall within the definition of “copyright management information” because they
 12 were not directed towards an “automated” copyright protection system). Put
 13 differently, the information has to relate to “technological measures” aimed at
 14 controlling access to or reproduction of a copyrighted work, such as data encryption
 15 on music files that prevent copying. *Id.* (The technological measures must either
 16 “effectively control access to a work or effectively protect[] the right of a copyright
 17 owner.”).

18 Here, ISRCs and UPCs do not control access to the sound recordings, but
 19 merely serve to identify the works for inventory and tracking purposes. Therefore,
 20 since ISRCs and UPCs cannot be “copyright management information” as a matter
 21 of law, Plaintiff’s DMCA claim must fail as a matter of law.

22 Thus, this Court should dismiss Plaintiff’s second cause of action without
 23 leave to amend.

24 **C. Plaintiff Lacks Standing To Sue.**

25 Because “Article III standing is a species of subject matter jurisdiction[,]” a
 26 litigant may seek dismissal of an action under Federal Rule of Civil Procedure
 27

28 ¹⁴ *What is an ISRC?*, <https://www.usisrc.org/about/index.html>.

1 12(b)(1) for lack of standing. *See Carijano v. Occidental Petroleum Corp.*, 643
 2 F.3d 1216, 1227 (9th Cir. 2011) (citation omitted).

3 Under the Copyright Act, only the “legal or beneficial owner” of an exclusive
 4 right in a copyright has standing to sue when that right is infringed. 17 U.S.C. §
 5 501(b). This means that, as a matter of timing, the owner can sue for the
 6 infringement of a right that occurred only *while it was the owner of that right*.
 7 Plaintiff therefore lacks standing to sue for copyright infringement.

8 *First*, as discussed *supra*, Plaintiff has failed to allege facts establishing that it
 9 is the owner of any rights in the asserted sound recordings. It therefore lacks
 10 standing to sue based on those sound recordings.

11 *Second*, Plaintiff asserts in its complaint that it has been “assigned the
 12 exclusive right to pursue causes of action for infringement **that have accrued in**
 13 **favor of the copyright owners** of these works.” (Compl. ¶ 13) (emphasis added). In
 14 other words, Plaintiff purports to bring at least some of its copyright claims on
 15 behalf of other parties, i.e., the copyright owners of these works.

16 In *Silvers v. Sony Pictures Entm’t, Inc.*, 402 F.3d 881 (9th Cir. 2005), the U.S.
 17 Court of Appeals for the Ninth Circuit considered whether the purported transfer of
 18 an accrued cause of action, when not accompanied by the transfer of title in the
 19 copyrighted work, was sufficient to establish standing, and concluded that it was
 20 not. *Id.* at 890. Therefore, Plaintiff cannot bring infringement claims for any works
 21 for which it did not hold an exclusive substantive right at the time of the alleged
 22 infringement. That is, the bare “right to sue” is insufficient to confer standing for a
 23 copyright infringement suit. *See also Righthaven LLC v. Hoehn*, 716 F.3d 1166 (9th
 24 Cir. 2013). Thus, since Plaintiff purports to bring its claims based on causes of
 25 action that have accrued in favor of others, its copyright infringement claims should
 26 be dismissed for lack of standing without leave to amend.

27 **IV. CONCLUSION**

28 This Court should not abide Plaintiff’s calculated selection of a forum outside

1 its home. As CJ E&M America has clearly shown, the parties, this Court, and the
2 public would be oppressively burdened by having to try this case here. Therefore,
3 this Court should dismiss this lawsuit in its entirety so that it can be refiled in a
4 Korean court.

5 In the alternative, this Court should dismiss Plaintiff's complaint without
6 leave to amend because Plaintiff cannot show that it has standing to bring this
7 lawsuit in the first place, and it has not and cannot state claims for which this Court
8 can grant it relief.

9
10 DATED: April 29, 2015

Respectfully submitted,

11
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16

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